IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **CWP No.11049 of 2006**

DATE OF DECISION: July 24 , 2006

KARNAIL SINGH ...PETITIONER

VERSUS

STATE OF PUNJAB ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.
HON'BLE MRS. JUSTICE NIRMAL YADAV.

PRESENT: MR. P.K. GUPTA, ADVOCATE FOR THE PETITIONER.

ASHUTOSH MOHUNTA, J.

The petitioner has prayed that a writ in the nature of certiorari for quashing the orders dated 29.11.94 and 20.3.1997 (Annexures P-2 and P-3), respectively and the order dated 9.8.1999, passed by the Addl. Commissioner (Appeals) Patiala Division, (Annexure P-4) and the order dated 6.10.2005, (Annexure P-5) passed by the Financial Commissioner, Appeals-I be issued.

It has also been prayed that a writ in the nature of mandamus directing the official respondents to upheld the order dated 13.7.1992 (Annexure P-1) passed by Assistant Collector, IInd Grade, whereby he ordered the correction of khasra girdwari in the name of the petitioner with respect to the land in dispute be issued.

The petitioner filed three applications for correction of the khasra girdwari against the private respondents before the Assistant Collector, IInd Grade, Kharar, who after making spot inspection ordered for

correction of the khasra girdawari in the name of the petitioner by passing three separate orders dated 17.9.1992 (Annexure P-1). Respondent Nos.7 to 22 challenged the orders passed by the Assistant Collector, IInd Grade before the Collector, Kharar by filing three separate appeals. The petitioner initially appeared before the Collector but subsequently did not appear on many dates. The Collector after hearing the counsel for the private respondents set aside the order passed by the Assistant Collector, IInd Grade by passing an ex-parte order dated 29.11.1994 (Annexure P-2). The petitioner filed an application for setting aside the ex-parte order before the Collector which was dismissed vide order, Annexure P-3. The petitioner then filed three separate appeals before the Addl. Commissioner, Patiala which was also dismissed by him vide orders dated 9.8.99 (Annexure P-4). The revision filed by the petitioner was also dismissed vide Annexure P-5.

Learned counsel for the petitioner has argued that the Assistant Collector, IInd Grade, Kharar had passed the order Annexure P-1 and had directed the correction of the khasra girdawari in the name of the petitioner after making spot inspection and these orders have been set aside by the higher authorities on the basis of conjectures and surmises.

Undisputedly, the land in question was allotted to the private respondents by the Addl. Director (Consolidation) vide order dated 28.4.1988. The application under Order 39 Rule 1 & 2 CPC for grant of temporary injunction against the private respondents filed by the petitioner was dismissed by Sub Judge Ist Class, Kharar vide order dated 5.4.1991, by observing that neither a prima facie case existed nor the balance of convenience is in favour of the plaintiff (present petitioner) justifying the grant of injunction. Ultimately the suit filed by the petitioner was dismissed

on 30.7.1993 by holding that although the petitioner was in possession of the suit land but the possession was that of a trespasser and not on the basis of legal right and he was not entitled for grant of relief for permanent injunction against the private respondents. The appeal filed against the order of the trial Court was dismissed by the Addl. District Judge, Ropar on 7.12.1996. Even the RSA filed by the petitioner was dismissed by the High Court on 10.11.1997.

From a perusal of the aforementioned facts, it is clear that the trespasser cannot lay his claim for possession against the lawful owner. The private respondents were validly allotted the land in dispute, whereas the status of the petitioner is that of a trespasser. In these circumstances, we do not find any ground to set aside the well reasoned orders passed by the Collector, Addl. Commissioner and the Financial Commissioner, respectively. Resultantly, there is no merit in the writ petition and the same is dismissed.

(ASHUTOSH MOHUNTA)
JUDGE

July 24, 2006
Gulati

(NIRMAL YADAV)
JUDGE